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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GLEN CASABURI,

Defendant and Appellant.

B236187

(Los Angeles County  
Super. Ct. No. PA069960)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Lesley C. Green, Judge. Affirmed as corrected.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Toni R. Johns Estaville, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Glen Casaburi of unlawfully taking or driving a car and receiving stolen property. He contends that (1) the trial court should have granted his motion to strike a 1987 burglary conviction and (2) the abstract of judgment is incorrect. The denial of defendant's motion to strike was not an abuse of discretion. However, the abstract of judgment must be corrected to reflect the court's pronouncement staying the sentence on defendant's second conviction. As corrected, the judgment is affirmed.

## **FACTS**

### *The Prosecution's Case*

Robert Hovakemian manages property on Division Street in Los Angeles (the Property) on behalf of its owner, Tommy Thompson. Hovakemian is overseeing a remodel of the Property. An iron fence surrounds the Property and a locked gate crosses the driveway. The gate is normally closed.

David Lomen lived at the Property, performing electrical, painting and drywall work. Thompson permitted Lomen to leave his vehicle, a beige 1985 Toyota pickup truck, in the driveway. Hovakemian had the keys to Lomen's truck and permission to move the vehicle around as needed during the remodeling process. Neither Lomen nor Hovakemian believe that defendant Casaburi was authorized to stay at the Property or perform remodeling work on it.

Lomen identified Casaburi as a friend of Thompson's who spent time at the Property. The men used methamphetamine together. Lomen never gave defendant permission to drive his truck, or to take the truck in for repairs. The truck was not supposed to be driven because it was uninsured and unregistered.

In the spring of 2010, Lomen and Thompson were arrested on drug charges. When Lomen was released from jail in June 2010, he was upset to see Casaburi driving the truck. Casaburi justified his possession of Lomen's car keys by saying that he was preventing Thompson's girlfriend Teresa from taking the truck. Lomen took the car keys away from defendant and gave them to Hovakemian for safekeeping. Lomen told defendant that he did not want him driving the truck anymore.

Lomen entered a residential drug rehabilitation center from July 2010 until February 2011. At the time, he was facing six months in jail for drug possession. He agreed to undergo drug rehabilitation as an alternative to imprisonment. At the end of 2010, Hovakemian noted that Lomen's truck was missing from the Property; he relayed news of the theft to Lomen by telephone. Lomen's truck was reported stolen on January 27, 2011.

On February 5, 2011, two police officers on patrol saw a tan pickup truck make an illegal left turn. They checked the license plate and saw that it was reported stolen. The police arrested the male driver and a female passenger. Casaburi was identified in court as the driver of the stolen vehicle. The police recovered the car keys that defendant was using, which were manufactured by General Motors. The police were able to start the Toyota with the GM keys. The ignition had been punched. On the driver's seat was a plastic bag containing a usable amount of crystal methamphetamine.

When the truck was stolen, it contained all of Lomen's clothes and materials for doing work as an electrician—breakers, switches, plugs, and light fixtures. Lomen placed these items in the truck, and locked it, just before entering the drug treatment program. Lomen's personal property was gone when he recovered the truck. Moreover, the truck was damaged: a side panel and all the rubber along the side of a door were gone, the windshield wiper control arm was broken, and the seats were torn.

### *The Defense Case*

Rex Shields is a concrete contractor who also repairs automobiles. He knows Lomen and Casaburi. In 2010, Casaburi came by Shields's shop in Lomen's truck to ask why the vehicle was overheating. Shields does not know why Casaburi was driving Lomen's truck, but knew that Lomen was in rehab or custody at the time. Later, Lomen mentioned to Shields that the truck had been stolen, along with his tools and other things.

Karen Emerson is acquainted with Lomen and is a good friend of Casaburi's, who has lived from time to time at her home. She was unaware that Casaburi uses methamphetamine and has a criminal record. She thought that Casaburi and Lomen had fun together and were buddies. She did not know why Casaburi was arrested.

Diane Bitner is related to Casaburi and knows Dave Lomen. Bitner has a good opinion of Casaburi's honesty, and a poor opinion of Lomen, reciting instances in which Lomen has lied. She often wondered about Lomen's behavior, because he acted peculiarly and twitches; she thought he might be using drugs.

Defendant testified on his own behalf. He admitted having served a prison sentence for possessing methamphetamine for sale 20 years ago, and conceded that he has used the drug since completing his sentence. He described having a "really tight" relationship with Lomen, whom he has known since high school. Defendant, Thompson and Lomen hung out together and used drugs. Defendant opined that Lomen tells lies "on stuff that there was no reason to lie about."

Defendant, Thompson and Lomen lived at the Property while fixing it up for resale. In April 2010, the marshals arrested Thompson and Lomen. Once his friends were arrested, defendant felt that both the Property and Lomen's truck were "entrusted to me." While Lomen was in prison, defendant drove the truck to Rex Shields's shop to find out why it was running so poorly. After Lomen was released from prison—but before he started the rehabilitation program—he returned to the Property and asked defendant to return his car keys. The keys that defendant gave Lomen were the Toyota keys that came with the vehicle.

Defendant denied that he entered the Property to steal Lomen's truck. Defendant became aware that the truck was stolen when Lomen telephoned in January 2011, and asked if defendant had seen his truck. Defendant told Lomen he had not seen it. In February 2011, defendant was hanging out with friends when Thompson's former girlfriend Teresa drove up in Lomen's truck. Defendant noted that in April 2010, while Lomen was incarcerated, defendant cut a set of GM keys on a key machine to fit the ignition to Lomen's Toyota to have "a spare set of keys for his truck."

After obtaining the GM keys to Lomen's truck from Teresa, defendant drank with his friends for a while longer, then got into the truck to take it to Rex Shields's shop. He was planning to return the vehicle to Lomen, but was unable to reach him. He did not call the police to tell them where to find the truck, which he knew was stolen, because

“It’s just not what we do.” Defendant was not expecting trouble when he was pulled over by the police because he thought he had permission to drive the truck. He described himself as “heartbroken, confused” when the police told him he did not have permission to use the truck. Defendant denied that the methamphetamine found in the truck belonged to him.

### **PROCEDURAL HISTORY**

In an amended information, Casaburi was charged with: unlawfully driving or taking a vehicle (count 1); possessing methamphetamine (count 2); and receiving stolen property (count 3). The information alleged that Casaburi suffered two prior “strikes,” both felony convictions for first degree residential burglary in July 1987. In addition to the burglaries, the information alleged that Casaburi had four drug-related convictions in 1991, 1996 and 2005, and a weapons conviction in 1989, all resulting in prison terms.

Casaburi pleaded not guilty. Before trial, he admitted to one “strike,” the 1987 burglary conviction. During trial, he admitted six prison priors. A jury convicted Casaburi of counts 1 and 3, and acquitted him of count 2. Defendant requested a new trial and asked the court to strike the prior conviction because the burglary occurred 24 years earlier and he has never been convicted of a violent crime. He asked to be sent to a residential drug treatment program instead of prison.

The court denied Casaburi’s motion for a new trial and his request to strike the prior. After reviewing the probation and sentencing memoranda, and considering the victim’s request for leniency, the court denied probation. It sentenced Casaburi to the high term of three years on count 1, doubled by the strike to six years, plus one year for the prior prison sentence, for a total of seven years. It struck five prior prison term enhancements. In selecting the high term, the court cited Casaburi’s “extensive criminal history and . . . his efforts to manipulate the system even now. I would just consider that a lack of remorse.” The court also imposed the high term on count 3, which it stayed under Penal Code section 654.

## **DISCUSSION**

### **1. The Court's Refusal to Strike Casaburi's Prior Conviction**

Casaburi argues that the trial court should have granted his motion to strike a prior felony conviction so that he could be sentenced as a “non-strike” offender. The court had power “to strike factual allegations relevant to sentencing, such as the allegation that a defendant has prior felony convictions.” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504; Pen. Code, § 1385, subd. (a) [allowing dismissals “in furtherance of justice”].) When asked to strike a prior conviction, the court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

We review the trial court’s ruling under the deferential abuse of discretion standard, to see if it “‘falls outside the bounds of reason.’” (*People v. Williams, supra*, 17 Cal.4th at p. 162.) A court does not abuse its discretion by refusing to strike prior felony convictions “unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

It is only under “extraordinary” circumstances that a career criminal may be deemed to fall outside the spirit of the three strikes law, “‘once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack.’” (*People v. Carmony, supra*, 33 Cal.4th at p. 378.) A defendant who fails to address his substance abuse, has a spotty work history and poor prospects for the future falls within the spirit of the three strikes law. (*Id.* at pp. 378-379.) Even a lengthy span of time between the prior serious felony conviction and the present felony is not enough to ignore the sentencing norm of the three strikes law, if the record shows that the defendant continued to use drugs and “did not refrain from criminal activity during that span of time, [i.e.] he did not add maturity to age” by staying out of prison and obeying the terms of his parole. (*People v. Williams, supra*, 17 Cal.4th at p. 163.)

The trial court acknowledged that Casaburi's burglary conviction occurred 24 years ago. Since the burglary, Casaburi did not refrain from criminal activity, but "has six felonies, numerous misdemeanors, and three parole violations in between. [¶] Further, this charge, theft of a vehicle, is somewhat similar in the nature of the strike of the residential burglary in that both show disregard for the law and the property rights of others. [¶] Moreover, it's my finding that the defendant shows no remorse. Rather, as his history has shown, [he has] a disinclination to conform his conduct to society's norms and requirements. [¶] Further, numerous charges . . . have involved illegal substances. Pursuant to his testimony, he has shown no desire to change that, to overcome that habit, to become employed, or to become a contributing and law abiding member of society. . . . Mr. Casaburi is in his mid 40's. He seems satisfied with his lifestyle, completely lacking in remorse, or any intent or motive to change."

The court voiced awareness of its discretion to strike Casaburi's prior conviction, and there is a "legislative presumption that a court acts properly whenever it sentences a defendant in accordance with the three strikes law." (*People v. Carmony, supra*, 33 Cal.4th at p. 376.) We cannot say that the court's decision to deny Casaburi's motion was arbitrary or irrational. Although defendant's prior strike is 24 years old, he continues to commit crimes, resulting in multiple convictions and prison sentences since the 1987 burglary. His six convictions indicate that he falls within the spirit of the three strikes law as a career criminal. (See *People v. Strong* (2001) 87 Cal.App.4th 328, 340 [a "revolving-door career criminal" is the kind of person for whom the three strikes law was devised].) The theft of Lomen's vehicle mirrors the 1987 theft crime.

Defendant has a longstanding addiction to methamphetamine he has not tried to overcome, even after his friends Thompson and Lomen were arrested on drug charges. The trial court was able to observe firsthand Casaburi's attitude and credibility during trial. Based on these observations, the court concluded that defendant is an unrepentant criminal with no interest in becoming a contributing member of society.

Defendant admits that he has had six additional felonies since 1989 plus numerous misdemeanor convictions. Nevertheless, he argues that his conduct "cannot be

considered the actions of a serious criminal.” He maintains that that he is “a non-violent, damaged, middle aged individual who is more of a threat to himself then [*sic*] he is to society.” We disagree with defendant’s self-appraisal.

The record shows that defendant is a clever and practiced criminal. In June 2010, Lomen caught defendant driving his truck. Upset, he instructed defendant not to drive the vehicle again, removed the keys from defendant, and gave them to Hovakemian for safekeeping. Defendant testified that he handed Lomen the Toyota keys that came with the vehicle when Lomen demanded them. When Lomen left for his drug treatment program in July 2010, the truck was locked and safely stored behind a fence and a gate.

Undeterred by Lomen’s words or actions in placing the car and its keys in a safe place, defendant availed himself of a duplicate key, which he made using GM keys and a key machine. Contrary to defendant’s testimony that Lomen’s truck was “entrusted to me,” the evidence indicates that defendant violated Lomen’s express admonition to stay away from the truck and used a fake set of keys to drive off with the vehicle. All of Lomen’s personal effects stored in the truck were never seen again. Defendant’s willingness to harm those he considers friends shows that he is, in fact, a threat to society. The trial court did not abuse its discretion by denying defendant’s motion to strike his prior conviction. The court’s ruling was based on the evidence it heard, not on any antipathy to defendant.

## **2. Amendment of the Abstract of Judgment**

As to count 1 (driving or taking a motor vehicle), the court indicated that it intended “to impose the high term of three years, doubled by the strike to six years, plus one for one of the priors. That’s a total of seven years. [¶] And I intend to strike the five other prior enhancements pursuant to 1385.” As to count 3 (receiving stolen property), the court stated that it intended “to impose the high term. I believe that’s one year, doubled to two years, plus one prior enhancement for a total of three years. Striking the other priors per 1385. [¶] That would be stayed pursuant to Penal Code section 654.” The court gave reasons for selecting the high term.



Casaburi maintains that the record is unclear: although the trial court “believed” that the high term was one year on count 3, the abstract of judgment shows that defendant received the high term of three years for count 3. As defendant acknowledges in his brief, the high term for receiving stolen property is three years. (Pen. Code, §§ 496, subd. (a), 1170, subd. (h)(1).) The court misspoke when it listed the high term as one year: this is not a term authorized by law. Respondent notes that the abstract of judgment correctly states the high term of three years on count 3, and the court clearly intended to impose the high term.

An appellate court may correct an abstract of judgment if it echoes the trial court’s misstatement of the length of a prison term under a statute. In *People v. Cantrell* (2009) 175 Cal.App.4th 1161, 1164-165, for example, the trial court mistakenly identified the low term as one year, when it was actually 16 months, allowing the reviewing court to correct the abstract to reflect the longer term authorized by law. In this instance, there is no need to correct the abstract of judgment because it already reflects the trial court’s intent to impose the high term authorized by law, which is three years.

Respondent concedes that the abstract must be corrected to show that the sentence on count 3 is stayed. (Pen. Code, § 654.) The court stated at sentencing, “I think we all agree this is a 654 issue.” A reviewing court may correct an abstract of judgment when it fails to accurately reflect the trial court’s oral pronouncement that a sentence will be stayed pursuant to Penal Code section 654. (*People v. Myles* (2012) 53 Cal.4th 1181, 1222, fn. 14; *People v. Cantrell*, *supra*, 175 Cal.App.4th at p. 1165.)

**DISPOSITION**

We order that the abstract of judgment be corrected to conform to the trial court's oral pronouncement that the sentence on count 3 (Pen. Code, § 496) is stayed pursuant to Penal Code section 654. The judgment is affirmed as so corrected.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.